In the Supreme Court of the United States, 1

OCTOBER TERM A. D. 1903.

WYCKOFF, SEAMANS & BENEDICT,
Petitioner,

vs.

HOWE SCALE COMPANY OF 1886 AND FAY-SHOLES COMPANY,
Respondents. 2

Petition for Writ of Certiorari.

To the Supreme Court of the United States of America:

Your petitioner, Wyckoff, Seamans & Benedict, a corporation organized and doing business under and by virtue of the laws of the State of New York, 3 respectfully shows to this Court as follows:

1. That your petitioner, complainant in the suit of Wyckoff, Seamans & Benedict vs. the Howe Scale Company of 1886, is a corporation organized under the laws of the State of New York, with its principal place of business located at Ilion, in said State, and that it is the successor in the typewriter business of two Remington corporations to wit,—E. Remington & Sons and Remington Standard Typewriter Manufacturing Company.

4 2. That the typewriter business of your petitioner's predecessor, E. Remington & Sons, was founded in 1873 at Ilion, N. Y., and was thereafter continuously carried on by said Remington corporations and by your petitioner, and at the time of the filing of the bill of complaint herein your petitioner's writing machines were sold and used in and through the United States and in all foreign countries, and its typewriter business was the largest and most valuable one of its kind in the world.

3. That the machines of your petitioner and its predecessors have, for many years, been marked and generally known and designated as the "Remington" and the "Remington Typewriter," and
5 have been extensively advertised for sale, offered for sale and sold and purchased as such both in the United States and in foreign countries.

4. That the respondent, Fay-Sholes Company, is a corporation under the laws of the State of Illinois, organized in the year 1897, under the name Remington-Sholes Company, for the purpose of manufacturing and selling typewriters, and has designated, advertised, offered for sale and sold its machines as the "Remington-Sholes," and "Rem-Sho" typewriter.

Record, pp. 27, 28, 1256, 1257, 1273.

6 5. That the respondent, Howe Scale Company, is a corporation created by and under the laws of the State of Vermont, and prior to and at the time of the commencement of this suit was the general sales agent for the United States of the corporation, Remington-Sholes Company, and as such had offices in various cities and places in the United States, where it advertised for sale, offered for sale and sold the so-called "Remington-Sholes" or "Rem-Sho" typewriter.

Record, pp. 8, 9, 27, 28.

6. That in or about the month of September, 1898, your petitioner filed its bill of complaint in this

case against the respondent, Howe Scale Company of 1886, in the United States Circuit Court for the district of Vermont, to restrain unfair and fraudulent competition on its part with petitioner in the sale of typewriting machines manufactured by the Remington-Sholes Company. 7

7. That the essential vice of the respondent's acts consisted in the use of the name "Remington" upon typewriting machines, and in connection with the sale thereof. The substance of the prayers of the bill is that the use of the name "Remington," and the abbreviation "Rem-Sho" by the respondent, Howe Scale Company of 1886, as it was employing the same, might be prohibited.

8. That, after the filing of the bill of complaint in said cause, and the filing of an answer in behalf of respondent, Howe Scale Company of 1886, and after replication was filed by your petitioner, and after testimony was taken in the case, the same came on for hearing, and was heard in May, 1901, by the United States Circuit Court for the District of Vermont. That, after taking said cause under advisement, said Circuit Court rendered a decision in favor of your petitioner, and that a copy of the opinion is annexed to the petition for writ of *certiorari* heretofore filed by the respondents herein, and is there marked Exhibit B. Petitioner craves leave to refer to said opinion in connection with this application, and as a part thereof. 8 9

9. That a decree was entered in said action, a copy of which is annexed to respondents said petition, and marked Exhibit C, and that said decree, among other things, enjoined and restrained the respondent, Howe Scale Company of 1886, from making use of the designation "Remington" and the abbreviation "Rem" upon typewriting machines, and in connection with the advertising for sale, offering for sale, and the sale thereof.

10. That, after the entry of said decree by the said Circuit Court, the respondent, Howe Scale Com-

10 pany of 1886, took an appeal to the United States Circuit Court of Appeals for the second circuit, and that said appeal came on for hearing and was heard by said Circuit Court of Appeals on the 7th day of February, 1903, and, after the argument of said appeal, said cause was taken under advisement by said court, which, on or about the 9th day of April, 1903, reversed the decree of the Circuit Court, in so far as the decree of that court had enjoined the respondent, Howe Scale Company, from using the abbreviation "Rem-Sho" upon and in connection with the sale of writing machines; but found and held that the decree of the lower Court was correct in enjoining the respondent,
11 Howe Scale Company of 1886, from using the name "Remington," and remanded the cause, with instructions to decree in favor of petitioner only as to the name Remington, as by reference to the majority opinion of the United States Circuit Court of Appeals of the second circuit, copies of which are annexed to the petition of the respondents hitherto filed in this cause, marked Exhibit D, and also the decree of the court entered thereon, marked Exhibit F, will more fully and at large appear.

11. Your petitioner further represents that the proofs in this case establish that the abbreviation "Rem" was frequently used and employed as a designation for your petitioner's writing machines,
12 and was a well understood abbreviation of petitioner's trade name "Remington" long prior to the organization of the Remington-Sholes Typewriter Company and the Remington-Sholes Company.

Record, pp. 272-275, 135, 275-278, 1426, 190, 206, 207.

12. Your petitioner further shows that the abbreviation "Rem-Sho" is first alleged to have been used by the Remington-Sholes Typewriter Company in or about August, 1895, as a telegraphic code address, and that such use was continued until July, 1897, after which time it is alleged to have been

used in connection with the manufacture and sale of the writing machines of the Remington-Sholes Company. 13

Record, pp. 1352, 1353, 1486.

13. Your petitioner is informed and believes that the term "Rem-Sho" was used merely as an abbreviation of the hyphenated name "Remington-Sholes," and was so understood by the public and by purchasers and users of typewriting machines.

Record, pp. 524, 530. 564, 596, 1,044, 1,448, 1,117, 1,124, 1,183, 1,225, 1,236, 1,257, 1,258.

14. Your petitioner, upon information and belief, further represents that the Circuit Court of Appeals erred in finding and holding that the abbreviation "Rem-Sho" was an arbitrary name and not sufficiently like "Remington" to be by itself a reasonable cause of confusion, inasmuch as the proofs show that it is not an arbitrary name, but that "Rem" was a long used and thoroughly understood abbreviation of the name "Remington," and the designation "Rem-Sho" was generally understood in the trade and by the public to be merely an abbreviation of the hyphenated name Remington-Sholes. 14

15. And your petitioner avers that the present application is one in which it is proper for this Court to issue a writ of *certiorari*, and, among others, for the following reasons: 15

(a) Because there is a conflict of decision between the Circuit Court for the District of Vermont and the Circuit Court of Appeals for the second circuit in respect of the abbreviated name "Rem-Sho."

(b) Because whether the respondent, Remington-Sholes Company, invaded any right of this petitioner by the use of the abbreviation "Rem-Sho" upon typewriting machines and in the sale thereof is still undetermined in the case pending in the

16 United States Circuit Court for the Northern District of Illinois, wherein your petitioner is complainant and the Remington-Sholes Company defendant, and a full consideration of this case by this Honorable Court will tend to prevent costly and undesirable litigation and settle all questions in controversy between the parties to this action.

(c) Because this Court having already granted respondents motion for a writ of *certiorari* the whole record and proceedings of the courts below will be before it at the hearing of this case, and that little if any additional labor will be imposed upon this Honorable Court if it shall grant this application, hear the whole case and thereby promote justice to
17 all interested therein.

(d) Because the Court of Appeals erred in holding that the short name "Rem-Sho" was not sufficiently like "Remington" to be likely to cause confusion for the reason that the abbreviated or short name "Rem-Sho" had theretofore always been used in connection with the hyphenated name "Remington-Sholes," and to use the abbreviation "Rem-Sho" is to all intents and purposes to use the longer name "Remington-Sholes."

Wherefore, in view of the premises, petitioner prays that this honorable court will grant its writ of *certiorari* directed to the Circuit Court of Appeals
18 for the Second Circuit requiring that the records of said case in said court and its decree be certified to this court, and that this honorable court will thereupon proceed to correct the error complained of, and give to your petitioner such other and further relief as the nature of the case may require and to the court may seem proper in the premises.

WYCKOFF, SEAMANS & BENEDICT,
By J. F. McCLAIN,
Secretary.

EDMUND WETMORE,
HENRY D. DONNELLY,
of Counsel for Petitioner.

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UNITED STATES OF AMERICA,
STATE OF NEW YORK,
Southern District of New York. } ss.

JOHN F. MCCLAIN, being first duly sworn, says that he is the secretary of the above named petitioner, Wyckoff, Seamans & Benedict, and as such secretary has full knowledge of its business affairs and particular knowledge of the matters and things set forth in the above petition and of the conduct of the proceedings in the above entitled action, that he has read the foregoing petition subscribed by him and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief.

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J. F. MCCLAIN.

Subscribed and sworn to before me this 11th day of December, 1903.

H. C. COLEMAN,
Notary Public, Kings Co., N. Y.
Certificate filed in N. Y. Co.

Notary's Seal.

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